

P-3014/NA-89-343 GRANTING AUTHORITY TO PROVIDE INCOMING 800 SERVICE AND
DENYING AUTHORITY TO PROVIDE DIRECT DIAL SERVICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Application of
MinnTelCo L.D.S., Inc. for a Certificate of
Authority to Provide Long Distance Service

ISSUE DATE: October 9, 1989

DOCKET NO. P-3014/NA-89-343

ORDER GRANTING AUTHORITY TO
PROVIDE INCOMING 800 SERVICE AND
DENYING AUTHORITY TO PROVIDE
DIRECT DIAL SERVICE

PROCEDURAL HISTORY

On May 15, 1989 MinnTelCo L.D.S., Inc. (MinnTelCo or the Company) filed a request for a certificate of authority to provide two long distance telephone services, incoming 800 service and direct dial service. The Department of Public Service (the Department) examined the request and filed its report on September 6, 1989. The Department recommended granting authority to provide incoming 800 service and denying authority to provide direct dial service, unless and until the Company eliminated geographical deaveraging from its direct dial rate structure.

The Company responded to the Department's recommendation by alleging it was not a long distance reseller but a partnership of businesses and that the geographical deaveraging prohibition therefore did not apply. The Company also requested an exemption from the requirement, should the Commission decide that it did apply.

The matter came before the Commission on September 26, 1989.

FINDINGS AND CONCLUSIONS

The Business Partnership Issue

MinnTelCo alleged that it was not a reseller of long distance services, serving customers, but a

partnership of businesses, serving members, and was therefore not subject to the requirement that long distance rates be geographically averaged. The Commission does not agree.

Minn. Stat. § 237.60, subd. 3 (1988) prohibits all telephone companies from charging geographically deaveraged rates. The statutory definition of "telephone company" clearly includes MinnTelCo:

"Telephone company" means and applies to any person, firm, association, or any corporation, private or municipal, owning or operating any telephone line or telephone exchange for hire, wholly or partly within this state, or furnishing any telephone service to the public. . . .

Minn. Stat. § 237.01, subd. 2 (1988).

MinnTelCo proposes to furnish its services to any business entity willing to pay a nominal (\$1.00) membership fee. The Company is clearly offering service to the public within the meaning of the statute and is therefore a telephone company. As a telephone company it is subject to the deaveraging prohibition of Minn. Stat. § 237.60, subd. 3 (1988).

The Exemption Issue

The Company also requested an exemption from the prohibition against geographically deaveraged rates on grounds of economic hardship. The Company argued that its small size made the costs of developing a unified rate structure prohibitive, and proposed instead to base its interLATA rates on AT&T's rate schedule and its intraLATA rates on Northwestern Bell Telephone Company's. This would result in some calls of the same distance being charged at different rates.

Although the Commission may, when necessary, vary or waive the application of its rules (Minn. Rules, part 7830.4400), the Commission has no such authority in regard to statutes. It is the telecommunications statute which imposes the prohibition against geographical deaveraging: "A telephone company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the state where it offers the services. . . ." Minn. Stat. § 237.60, subd. 3. The Commission is therefore without authority to grant MinnTelCo an exemption from the prohibition.

Incoming 800 Service

The Commission agrees with the Department that the Company should be granted a certificate of authority to provide incoming 800 service.

The Department's examination of the Company's management and financial condition demonstrates an ability to provide safe, reliable service and to respond promptly to customer complaints. The services the Company will offer are subject to competition; the Company's entry into the market is therefore a matter of public convenience and necessity. The proposed rates are above incremental cost, as required under Minn. Stat. § 237.60, subd. 4 (1988). The proposed rates and terms and conditions of service are comparable to those of other companies. They are also just and reasonable, as required under Minn. Stat. § 237.06 (1988). The certificate of authority will be granted.

ORDER

1. MinnTelCo L.D.S., Inc. is hereby granted a certificate of authority to provide incoming 800 service under Minn. Stat. § 237.16, subd. 4 (1988).
2. The rates and terms and conditions of service for incoming 800 service contained in the Company's tariff filing are approved.
3. The Company's request for a certificate authority to provide direct dial long distance service is denied, unless and until the Company has eliminated geographical deaveraging from its proposed rate structure.
4. The Company may file a new petition for a certificate of authority to provide direct dial long distance service with geographically averaged rates at any time.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)